STATE OF MICHIGAN

COURT OF APPEALS

AUTO CLUB INSURANCE COMPANY,

Plaintiff-Appellee,

v

CHRISTOPHER MICHAEL BUERKEL, KAREN BOSHAW-WEAVER and STATE LANES, INC.,

Defendants,

and

AMIE R. SMITH,

Defendant-Appellant.

UNPUBLISHED
March 21, 2006

No. 258051
Saginaw Circuit Court
LC No. 03-049653-CZ

AUTO CLUB GROUP INSURANCE COMPANY,

Plaintiff-Appellee,

v

CHRISTOPHER MICHAEL BUERKEL, KAREN BOSHAW-WEAVER and AMIE R. SMITH,

Defendants,

and

STATE LANES, INC.,

Defendant-Appellant.

No. 258240
Saginaw Circuit Court
LC No. 03-049653-CZ

AMIE R. SMITH,

Plaintiff,

v

No. 260775
Saginaw Circuit Court
LC No. 03-047815-NI

CHRISTOPHER MICHAEL BUERKEL,

Defendant/Cross-Defendant,

and

KAREN LYNN BOSHAW-WEAVER,

Defendant-Appellee,

and

STATE LANES, INC.,

Defendant/Cross-Plaintiff-Appellant.

AMIE R. SMITH,

Plaintiff-Appellant,

v

No. 260781
Saginaw Circuit Court
LC No. 03-047815-NI

CHRISTOPHER MICHAEL BUERKEL,

Defendant/Cross-Defendant,

and

KAREN LYNN BOSHAW-WEAVER,

Defendant-Appellee,

and

STATE LANES, INC.,

Defendant/Cross-Plaintiff-Appellee.

Before: Smolenski, P.J., Whitbeck, C.J., and O'Connell, J.

PER CURIAM.

I. Overview

This matter involves two pairs of consolidated appeals that stem from the trial court's grant of summary disposition in the several related matters. The underlying facts are the same in all four cases, though the procedural posture differs between each set of consolidated appeals. The issues in each set of consolidated appeals also overlap. Specifically, each appeal turns, at least in part, on whether defendant Christopher Buerkel was a permissive driver. Thus, for the further efficient administration of justice we again consolidate these matters and dispose of all the issues raised in this sole opinion.

Docket Nos. 258051 and 258240[1] arise out of Auto Club Insurance Company's action seeking a declaratory judgment (the declaratory judgment action) that it did not have a duty to defend and indemnify Buerkel because he was not a permissive driver pursuant to defendant Karen Lynn Boshaw-Weaver's insurance agreement with Auto Club. The trial court granted summary disposition in favor of Auto Club. Docket Nos. 260775 and 260781[2] arise out of plaintiff Amie Smith's separate action (the tort action) against Buerkel, Boshaw-Weaver, and State Lanes, in which the trial court granted summary disposition in favor of Boshaw-Weaver. All four actions arise out of an accident in which Buerkel, while driving a vehicle owned by Boshaw-Weaver, struck a vehicle, in which plaintiff Amie Smith was a passenger, after Buerkel consumed alcohol at defendant dramshop State Lanes, Inc. We affirm.

II. Basic Facts And Procedural History

Boshaw-Weaver and Buerkel began dating in February of 2001. In February 2002, Boshaw-Weaver and her father purchased a used Pontiac Sunfire. The insurance policy for the vehicle was in Boshaw-Weaver's name alone. Boshaw-Weaver testified that on April 27, 2002, she left her parents' home with her three children at approximately 10:00 a.m. and went to pick Buerkel up at his home. She testified that after she picked Buerkel up, she had him drive because her two smaller children were misbehaving. She further testified that they arrived at State Lanes for a birthday party for one of her children sometime after 11:00 a.m.

Boshaw-Weaver testified that Buerkel was upset about her children's behavior that morning and that they were having a "silent fight." Boshaw-Weaver testified that while she and the children went bowling, Buerkel was playing billiards with his brother in a different area of State Lanes. Boshaw-Weaver further testified that she saw Buerkel with a single glass of beer at one point while he was playing billiards. Buerkel, however, testified that he actually consumed two pitchers of beer while he was at State Lanes.

Boshaw-Weaver testified that the party ended at approximately 3:00 p.m., at which point she loaded up the car, got in the driver's seat, and was prepared to leave when Buerkel's brother

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[1] This Court consolidated these two appeals by administrative order entered November 3, 2004.

[2] This Court consolidated these two appeals by administrative order entered June 28, 2005. In that same order, this Court ordered that these cases be submitted together with Docket Nos. 258051 and 258240.

informed her that he could not locate Buerkel. Boshaw-Weaver testified that she then went back inside to look for Buerkel but was unable to locate him inside State Lanes, so she returned to her car where she found him sitting in the driver's seat of the vehicle. Buerkel testified that he was upset about the children's behavior that morning and about the fact that he was not warned that Boshaw-Weaver's ex-husband was also going to be at the birthday party at State Lanes. Boshaw-Weaver testified that she could tell that Buerkel was angry with her and wanted to "have it out," so she asked Buerkel's brother to take one of her children home with him so that she and Buerkel could talk. (Boshaw-Weaver's other two children had already left the party with their father).

Boshaw-Weaver testified that Buerkel then told her that he was going to take the vehicle, but that she told him that she would not permit him to just take the vehicle and leave her there. Boshaw-Weaver testified that she was particularly concerned about preventing Buerkel from driving while he was upset. She testified that she reached into the vehicle through the open driver's side window and attempted to remove the keys from the ignition. She further testified that Buerkel then pushed her arm back out of the window, rolled the window up, and started the vehicle. Boshaw-Weaver testified that she began pounding on the window, but Buerkel ignored her. She testified that she then attempted to unlock the doors with her vehicle remote, but that Buerkel kept relocking them. Boshaw-Weaver testified that eventually she was able to get into the passenger side of the vehicle. She testified that Buerkel told her to get out, but that she refused.

According to Boshaw-Weaver, Buerkel then started driving away while the passenger door was still open. She testified that she then shut that door and began yelling at Buerkel, that she was able to get Buerkel to pull into a McDonald's parking lot, where she told him to let her out, and that after he stopped the vehicle, she attempted to open her door and grab the keys from the ignition at the same time. According to Boshaw-Weaver, she was able to briefly turn the car off, but her attempt to remove the keys from the ignition was unsuccessful. Boshaw-Weaver said that Buerkel quickly turned the car back on and began driving again as their fight continued to escalate. Boshaw-Weaver testified that she then saw another vehicle in front of them and told Buerkel to stop, but that he rear-ended the other car. Smith was the front seat passenger in the vehicle Buerkel hit resulting in injuries to her back, neck, and shoulder.

Boshaw-Weaver testified that after the accident, Buerkel ran away from the scene. Buerkel testified that he ran away because he wanted to get away from Boshaw-Weaver and because he wanted to call a friend to see if the friend could bail him out of jail. He further testified that he was able to use a neighbor's telephone and that, in addition to calling a friend, he called 9-1-1. Boshaw-Weaver testified that she spoke with the police at the scene and told them that Buerkel had been drinking.

Saginaw Township Police Officer Christopher Fredenburg responded to Buerkel's 9-1-1 call. According to Officer Fredenburg, Buerkel was visibly intoxicated and told the officer that he had argued with Boshaw-Weaver about her ex-husband being at the birthday party. Buerkel also told Officer Fredenburg that he had insisted on driving. Buerkel was subsequently arrested, and his blood alcohol level was determined to be 0.15 grams per 100 milliliters.

Boshaw-Weaver testified that Buerkel had helped her to pay for costs associated with the vehicle by giving her approximately $100 a month for a period of three months before the

accident, but he did not give her any money for the down payment on the vehicle. She also testified that Buerkel would sometimes purchase gasoline for the vehicle. Boshaw-Weaver further admitted that at approximately the same time that Buerkel began helping to pay for the vehicle, she gave him a set of keys for it so that he could use the vehicle to drive to work and back. Boshaw-Weaver testified that she and Buerkel worked opposite shifts at Professional Assembly Corporation and that she would drop the car off for Buerkel at his house during her lunch period, he would then drive the vehicle to work so that she could take the car home when her shift was over, and then she would pick Buerkel up when his shift was over. Boshaw-Weaver testified that, with her permission, Buerkel would occasionally take the car without her on weekends, but she had denied him use of the car on at least one occasion. Buerkel also testified that he always had to ask for permission before using the vehicle. Boshaw-Weaver testified that when they went out together, each would drive approximately 50 percent of the time, but Buerkel suggested that he usually drove.

After the car accident, Smith filed her tort action against Buerkel, Boshaw-Weaver, and State Lanes. While the tort action was pending, Auto Club filed its declaratory judgment action seeking a determination that it was not obligated to defend Buerkel or to pay any judgment against Buerkel because he was not insured under Boshaw-Weaver's insurance agreement where he was not operating the insured vehicle with Boshaw-Weaver's permission at the time of the accident. Auto Club, Smith, and State Lanes all filed motions for summary disposition.

Following two hearings on the matter, the trial court granted summary disposition in the declaratory judgment action in favor of Auto Club finding that Buerkel was not using the vehicle with Boshaw-Weaver's permission at the time of the accident. In so ruling, the trial court distinguished between the owner's liability statute,[3] pursuant to which a vehicle owner may be held liable if the vehicle is being driven with the owner's "express or implied consent or knowledge" and the financial responsibility act,[4] pursuant to which motor vehicle liability policies must insure any person using a motor vehicle with the insured party's "express or implied permission."

Thereafter, Boshaw-Weaver moved for summary disposition in the tort action arguing in part that she could not be held liable pursuant to the owner's liability statute because she had revoked her consent to Buerkel's use of the vehicle. The trial granted summary disposition in favor of Boshaw-Weaver, finding that she had revoked her consent to Buerkel's use of the vehicle and that the fact that she knew he was driving did not render her liable under the circumstances.

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[3] MCL 257.401(1).

[4] MCL 257.520(b)(2).

III. Permissive Use

A. Standard Of Review

We review trial court's ruling on a motion for summary disposition de novo.[5] Summary disposition is appropriate under MCR 2.116(C)(10) when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law." In ruling on a motion for summary disposition under MCR 2.116(C)(10), "a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party."[6] This issue also involves a question of statutory interpretation. Statutory interpretation presents a question of law that is reviewed de novo.[7]

B. The Tort Action And The Owner's Liability Statute

The owner's liability statute renders vehicle owners liable for injuries caused by the negligent operation of the vehicle, except that "[t]he owner is not liable unless the motor vehicle is being driven with his or her express or implied consent or knowledge."[8] Here, Boshaw-Weaver argued, and the trial court agreed, that she had effectively revoked her consent to Buerkel's driving of the vehicle. The trial court further concluded that the fact Boshaw-Weaver knew Buerkel was driving the vehicle at the time of the accident did not act to render her liable.[9]

According to *Roberts v Posey*,[10] the owner's liability statute

> absolves the owner from liability only when the vehicle is being *driven* without his express or implied consent or knowledge. The consent or knowledge, therefore, refers to the *fact* of the *driving*. It does not refer to the *purpose* of the driving, the *place* of the driving, or to the *time* of the driving.
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> The purpose of the statute is to place the risk of damage or injury upon the person who has the ultimate control of the vehicle.

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[5] *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

[6] *Scalise v Boy Scouts of America*, 265 Mich App 1, 10; 692 NW2d 858 (2005).

[7] *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003).

[8] MCL 257.401(1).

[9] Smith asserts that the trial court's decision was based on collateral estoppel, but this assertion is incorrect. In fact, the trial court noted that its decision in the declaratory judgment action did not address the question whether Boshaw-Weaver could be held liable pursuant to the owner's liability statute, but that after further review it found the reasoning it used in the declaratory judgment action applicable in the tort action.

[10] *Roberts v Posey*, 386 Mich 656, 661-662; 194 NW2d 310 (1972).

> The owner who gives his keys to another, and permits that person to move several thousand pounds of steel upon the public highway, has begun the chain of events which leads to damage or injury.
>
> The statute makes the owner liable, not because he caused the injury, but because he permitted the driver to be in a position to cause the injury.
>
> By common-law standards, this may be a remote, rather than a proximate cause. But it is competent for the legislature to declare a remote factor to be a proximate cause.

Moreover, a presumption of consent or knowledge arises on proof of permission to use the vehicle because plaintiffs are "at a great disadvantage in disproving defendant's version of the oral agreement under which the vehicle was delivered."[11] However, "[s]trong factual situations can be conceived in which owner consent is not concluded by proof of the owner delivering keys and possession of the vehicle."[12] Accordingly, the presumption of consent can be overcome by '"positive, unequivocal, strong, and credible evidence."'[13]

Considering the issue of whether Buerkel had Boshaw-Weaver's consent to drive the vehicle, we note that, generally, where the underlying facts of a case are not disputed, it is a matter of law for the courts to determine the existence of consent pursuant to the statute.[14] Here, it is undisputed that Boshaw-Weaver willingly gave a set of keys to the vehicle to Buerkel. Accordingly, there is a strong presumption that Buerkel was driving the vehicle with Boshaw-Weaver's consent at the time of the accident because Smith is at a disadvantage in arguing that there was consent in fact.[15] Moreover, the evidence of consent in this case is bolstered by the fact that Buerkel was helping to pay for the vehicle.

However, Boshaw-Weaver argues that she revoked her consent prior to the accident. On this point, *Roberts* is instructive. In *Roberts*, the vehicle owner had given his consent for another person to use his vehicle until a specified time.[16] But the permissive user of the vehicle failed to timely return it and subsequently was involved in an accident.[17] In finding that the vehicle owner could be held liable, the Court reasoned that although he attempted to locate the permissive user after that user failed to return the vehicle at the agreed time, there was no

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[11] *Id*. at 662-663.

[12] *Id*. at 663.

[13] *Bieszck v Avis Rent-A-Car Sys, Inc*, 459 Mich 9, 19; 583 NW2d 691 (1998), quoting *Ensign v Crater*, 41 Mich App 477, 481-483; 200 NW2d 341 (1972).

[14] *Bieszck*, *supra* at 19 n 8, 20 n 13.

[15] *Roberts*, *supra* at 662-663.

[16] *Id*. at 658.

[17] *Id*. at 659.

evidence presented that the vehicle owner tried get the user to stop driving.[18] Rather, the evidence showed that the owner simply wanted the user to return the vehicle.[19]

To the contrary, in this case, Boshaw-Weaver and Buerkel both testified that Boshaw-Weaver attempted to stop Buerkel from driving before the accident and, in fact, attempted to use force to regain control over Buerkel's set of keys to the vehicle. Under the reasoning set forth in *Roberts*, if this testimony is believed, such a revocation of consent is cognizable under the statute and distinguishes this case from those in which courts have found vehicle owners liable despite the permissive user's deviation from any limitations on use imposed by the vehicle owner.[20]

But Smith argues that Boshaw-Weaver's testimony lacks credibility because her testimony about Buerkel's use of alcohol was not consistent with Buerkel's own testimony concerning that subject. In addition, both Smith and State Lanes note that Boshaw-Weaver willingly got into the vehicle with Buerkel, suggesting that she did not revoke her consent. "[S]ummary disposition is rarely appropriate in cases involving questions of credibility, intent, or state of mind."[21] Nevertheless, neither Smith nor State Lanes has produced any evidence suggesting that Boshaw-Weaver's testimony concerning her attempts to stop Buerkel from driving is inaccurate. Indeed, neither Smith nor State Lanes has suggested that Buerkel's testimony was not credible, and his testimony concerning Boshaw-Weaver's attempts to stop him from driving was consistent with Boshaw-Weaver's own testimony. Thus, we conclude that there are no material disputed facts in this case. Considering the foregoing, we conclude that reasonable minds could not differ and that Boshaw-Weaver presented positive, unequivocal, strong, and credible evidence that she revoked her consent to Buerkel's driving.

However, that conclusion does not end this Court's inquiry. We find it significant that the owner's liability statute is phrased in the disjunctive and also refers to an owner's *knowledge* of the fact of driving.[22] Specifically, it states that, "[t]he owner is not liable unless the motor vehicle is being driven with his or her express or implied consent *or* knowledge."[23]

> It is well-established that the word "or" is often misused in statutes and it gives rise to an ambiguity in the statute because it can be read as meaning either "and" or "or." Generally, "or" is a disjunctive term, but the popular use of the word is frequently inaccurate and this misuse has infected statutory enactments. Their literal meanings should be followed if they do not render the statute

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[18] *Id*. at 663-664.

[19] *Id*.

[20] See, e.g., *Cowan v Strecker*, 394 Mich 110, 115; 229 NW2d 302 (1975).

[21] *In re Handelsman*, 266 Mich App 433, 438; 702 NW2d 641 (2005).

[22] MCL 257.401(1); *Roberts*, *supra* at 661-662.

[23] MCL 257.401(1) (emphasis added).

> dubious, but one will be read in place of the other if necessary to put the meaning in the proper context.[24]

We have found no cases that directly address whether a vehicle owner can be held liable pursuant to the owner's liability statute based solely on the owner's knowledge that someone else was driving her vehicle, even if the owner did not consent to that driving. When construing a statute "[w]e must consider the object of the statute, the harm it is designed to remedy, and apply a reasonable construction that best accomplishes the statute's purpose. In construing a statute, 'the court should presume that every word has some meaning and should avoid any construction which would render any part of a statute surplusage or nugatory.'"[25] The purpose of the owner's liability statute "is to place the risk of damage or injury on the person who has the ultimate control of the motor vehicle, as well as on the person who is in immediate control."[26] Moreover, the statute makes the owner liable because he "permitted the driver to be in a position to cause the injury."[27] In other words, the statute makes the owner liable because he is a remote cause of the injury.[28]

However, in the situation where the owner of a vehicle did not consent to the vehicle's use by another, but simply has knowledge of that use, it is difficult to see how the owner can be considered a remote cause of the injury. For example, a vehicle owner who is the victim of a carjacking will necessarily have knowledge that someone else is driving his vehicle, but if the thief then gets into an accident with the vehicle, the owner cannot be considered a remote cause of the accident because his control of the vehicle was completely usurped by someone else. In this situation, the vehicle owner cannot be said to have "permitted the driver to be in a position to cause the injury."[29]

On the other hand, reading the owner's liability statute such that it renders vehicle owners liable when they have given consent "and" have knowledge of the fact of someone else's driving arguably renders the inclusion of the word "knowledge" surplusage. Seemingly, once one has given express or implied consent to others to drive a vehicle, one must have express or implied knowledge that others might drive the vehicle. Thus, there is some reason to believe that the Legislature intended that owners who simply have knowledge that someone else is driving their

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[24] *People v Gatski*, 260 Mich App 360, 365; 677 NW2d 357 (2004) (citation omitted). It is notable that three justices of the Michigan Supreme Court opined that this Court improperly construed the statute at issue in *Gatski*. *People v Gatski*, 472 Mich 887; 694 NW2d 57 (2005) (Young, J., concurring, joined by Corrigan, J.) and (Taylor, C.J., dissenting).

[25] *Id.* at 366 (citation omitted), quoting *People v Borchand-Ruhland*, 460 Mich 278, 285; 597 NW2d 1 (1999).

[26] *North v Kolomyjec*, 199 Mich App 724, 726; 502 NW2d 765 (1993).

[27] *Roberts*, *supra* at 662.

[28] *Id.*

[29] *Id.*

vehicle can be held liable as a result of that knowledge, despite the fact that they never willingly surrendered control of their vehicle.

Nevertheless, we conclude that the Legislature only intended to hold those liable who willingly agreed to the assumption of risk by consenting to someone else's driving of their vehicle. It would not further the purpose of the act to hold vehicle owners liable for the negligence of others when the vehicle owner cannot even be considered a remote cause of the injury. Accordingly, we conclude that the inclusion of the word "knowledge" in the statute is not surplusage, but that is intended to explain that "implied consent" can be based on "knowledge" alone. Indeed, the Supreme Court's decision in *Roberts* suggests that the outcome of that case would have been different if the defendant's consent to the use of his vehicle had been revoked.[30] Put differently, if the defendant in that case had actually tried to get the user of the vehicle "out from behind the wheel," the defendant would not have been held liable.[31]

Therefore, *Roberts* supports the conclusion that an owner may not be held liable pursuant to the owner's liability statute despite the fact that he has knowledge that someone else is driving the owner's vehicle if the owner is attempting to get that person "out from behind the wheel."[32] According to the testimony of Boshaw-Weaver and Buerkel, that is precisely the situation presented in this case. In other words, while knowledge alone can be the basis of a presumption of implied consent, that presumption of consent is not irrebuttable. Therefore, if a vehicle owner has revoked previous consent to the use of the vehicle by another, then the owner cannot be held liable under the owner's liability statute.

In summary, we conclude that the trial court correctly determined that Boshaw-Weaver cannot be held liable pursuant to the owner's liability statute where she presented sufficient credible evidence that she revoked her consent to Buerkel's driving, thereby overcoming any contrary presumption, and where, although she had knowledge of Buerkel's driving, she was not a remote cause of the accident.

C. The Declaratory Judgment Action

(1) The Financial Responsibility Act

Smith's tort claim against Buerkel and Boshaw-Weaver relies on the residual liability provisions of the no-fault act.[33] The no-fault act "requires that an automobile insurance policy provide for residual liability."[34] And "the financial responsibility act continues [(despite the enactment of the no-fault act, MCL 500.3101 *et seq*.)] to present legitimate methods by which

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[30] *Id*. at 664.

[31] *Id*. at 663-664.

[32] *Id*.

[33] MCL 500.3135.

[34] *Farmers Ins Exch v Kurzmann*, 257 Mich App 412, 419; 668 NW2d 199 (2003).

vehicle owners may satisfy the insurance obligations created by the no-fault act."[35] To this end, the financial responsibility act provides that properly certified policies of liability insurance

> [s]hall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles *with the express or implied permission of such named insured*, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles . . . .[36]

For purposes of bodily injury and property damage liability coverage, Bowshaw-Weaver's insurance agreement with Auto Club defines "insured persons" to include any person using the named insured's car with the "permission" of the named insured. The insurance agreement also states that for purposes of bodily injury and property damage liability coverage, the insurance agreement, if certified as proof under any financial responsibility law, "will comply with the law to the extent of the coverage and Limits of Liability required by the law."

> "The policy and the statutes related thereto must be read and construed together as though the statutes were a part of the contract, for it is to be presumed that the parties contracted with the intention of executing a policy satisfying the statutory requirements, and intended to make the contract to carry out its purpose.
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> A policy of insurance must be construed to satisfy the provisions of law by which it was required, particularly when the policy specifies that it was issued to conform to the statutory requirement; and where an insurance policy has been issued in pursuance of the requirement of a statute which forbids the operation of a motor vehicle until good and sufficient security has been given, the court should construe this statute and policy together in light of the legislative purpose."[37]

Accordingly, Boshaw-Weaver's insurance agreement with Auto Club, which requires coverage for permissive users, must be construed in accord with the financial responsibility act, which mandates that insurance policies provide coverage for those using the insured motor vehicle with "the express or implied permission" of the named insured.[38]

We have found no case law clarifying what it means to have the named insured's permission to use a motor vehicle pursuant to MCL 257.520(b)(2). Rather, the cases addressing permissive motor vehicle use center on the interpretation of the owner's liability statute, which,

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[35] *Citizens Ins Co of America v Federated Mut Ins Co*, 448 Mich 225, 232; 531 NW2d 138 (1995), rev'd in part on other grounds *State Farm Mut Automobile Ins Co v Enterprise Leasing Co*, 452 Mich 25, 40 n 8; 549 NW2d 345 (1996).

[36] MCL 257.520(b)(2) (emphasis added).

[37] *Depyper v Safeco Ins Co of America*, 232 Mich App 433, 437; 591 NW2d 344 (1998), quoting *Rohlman v Hawkeye-Security Ins Co*, 442 Mich 520, 525 n 3; 502 NW2d 310 (1993).

[38] MCL 257.520(b)(2).

as explained, permits imposition of liability on the owner of a motor vehicle if the "vehicle is being driven with his or her express or implied consent or knowledge."[39]

Thus, we must rely on the principle that, "[t]he cardinal rule of statutory construction is to give effect to the Legislature's intent. When statutory language is clear and unambiguous, courts must apply it as written."[40] Accordingly, courts may consult dictionary definitions to determine the ordinary meaning of undefined statutory terms.[41] "Permission" is defined as "authorization granted to do something; formal consent."[42]

It is uncontested here that on previous occasions Boshaw-Weaver expressly authorized Buerkel to use the vehicle. What *is* contested is whether having given Buerkel permission to use the vehicle in the past and having specifically given him his own set of keys to the vehicle, Boshaw-Weaver's asserted attempt to revoke that permission prior to the accident at issue is cognizable under the financial responsibility act. Notably, the financial responsibility act uses the present tense phrase "using any such motor vehicle or motor vehicles with the express or implied permission of such named insured," which suggests that the insurance policy only has to provide liability coverage for Buerkel if his liability arose during a period when he was a permissive user. The insurance agreement also uses the present tense word "using." Thus, we conclude that coverage is not required simply because Buerkel had been a permissive user in the past.

Taking again into account Boshaw-Weaver's undisputed attempts to stop Buerkel from driving the vehicle just before the accident and that, in fact, she attempted to use force to regain control over Buerkel's set of keys, we conclude that reasonable minds could not differ and that Auto Club presented sufficient credible evidence that Buerkel was not using the vehicle with Boshaw-Weaver's express or implied permission at the time of the accident. Accordingly, the trial court correctly concluded that Buerkel was not an insured person pursuant to Boshaw-Weaver's insurance agreement with Auto Club.

(2) The Owner's Liability Statute

Nevertheless, both Smith and State Lanes assert, based on opinions interpreting the owner's liability statute,[43] that this Court should reach a different conclusion. In essence, Smith and State Lanes' argument is that "consent" and "permission" mean the same thing. They assert that because the Michigan Supreme Court has concluded that limitations on consent are generally ineffective under the owner's liability statute once a vehicle owner has given his keys

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[39] MCL 257.401(1).

[40] *Depyper*, *supra* at 438.

[41] *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002).

[42] *Random House Webster's College Dictionary* (2000), p 986.

[43] MCL 257.401(1).

to someone else,[44] unless there is '"positive, unequivocal, strong, and credible evidence"'[45] that there was no consent, any limitations Boshaw-Weaver placed on Buerkel's use of the vehicle are irrelevant because she gave him keys for the vehicle in the first place.

Even if we accept the argument that the Supreme Court's analysis concerning the owner's liability statute is instructive for purposes of interpreting the relevant portion of the financial responsibility act, we reject Smith and State Lanes' argument. This argument relies on the premise that once permission for use has been given, it cannot be revoked. On this point, we again find *Roberts* instructive. Implicit within the Court's analysis was the conclusion that even under the owner's liability statute, the presumption of consent based on an exchange of keys is not irrebuttable and that consent may be revoked.[46]

Contrary to the situation presented in *Roberts*, in this case, Boshaw-Weaver and Buerkel both testified that Boshaw-Weaver attempted to stop Buerkel from driving prior to the accident and, in fact, attempted to use force to regain control over Buerkel's set of keys to the vehicle. Under the reasoning set forth in *Roberts*, such a revocation of consent is cognizable under MCL 257.401(1) and distinguishes this case from those in which courts have found vehicle owners liable despite the permissive user's deviation from any limitations on use imposed by the vehicle owner.[47] Thus, the undisputed evidence in this case establishes that Boshaw-Weaver revoked Buerkel's authorization to use her vehicle, and Smith and State Lanes' contrary argument, which relies on authority interpreting the owner's liability statute, fails.

D. MCL 500.3101(2)(g)(i)

In both the declaratory judgment action and the tort action, Smith also argues that Buerkel was a co-owner of the vehicle pursuant to MCL 500.3101(2)(g)(i) because he had use of the vehicle for more than thirty days. However, it is not clear how a finding that Buerkel was a co-owner of the vehicle would render Boshaw-Weaver liable for Buerkel's actions or how it would indicate that he was using the vehicle at the time of the accident with Boshaw-Weaver's permission, which is required for a finding that he is an insured person pursuant to Boshaw-Weaver's agreement with Auto Club. A party may not announce an assertion of error and then leave it to the courts to discover and rationalize the basis of the claim of error.[48] Accordingly, we decline to address the issue.[49]

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[44] See, e.g., *Cowan*, *supra* at 115.

[45] *Bieszck*, *supra* at 19, quoting *Ensign*, *supra* at 481-483.

[46] *Roberts*, *supra* at 661-662; see also *Bieszck v Avis Rent-A-Car Sys, Inc*, 459 Mich 9, 19-20; 583 NW2d 691 (1998) (concluding that clear contractual language restricting the use of a rented vehicle to those over the age of twenty-five was sufficient to rebut the presumption of consent).

[47] See, e.g., *Cowan*, *supra* at 115.

[48] *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

[49] *Id*.

IV. Conclusion

In the cases stemming from the declaratory judgment action (Docket Nos. 258051 and 258240), we conclude that the trial court correctly determined that Buerkel was not an insured person pursuant to Boshaw-Weaver's insurance agreement with Auto Club because he was not using the vehicle with Boshaw-Weaver's express or implied permission at the time of the accident. In the cases stemming from the tort action (Docket Nos. 260775 and 260781), we conclude that the undisputed facts establish that Boshaw-Weaver revoked her consent to Buerkel's use of the vehicle. Therefore, we conclude the trial court correctly determined that she cannot be held liable under the owner's liability statute.

We affirm.

/s/ Michael R. Smolenski
/s/ William C. Whitbeck
/s/ Peter D. O'Connell